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251503Z Mar 04

C O N F I D E N T I A L SECTION 01 OF 02 ABUJA 000523

SIPDIS

E.O. 12958: DECL: 03/24/2014

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SUBJECT: BUHARI'S SUIT CONTINUES, HE IS UPBEAT

CLASSIFIED BY CDA RICK ROBERTS FOR REASONS 1.5 (b) AND (d).

11. (C) SUMMARY: Hearings continue at the Court of Appeals in ANPP candidate Buhari's legal challenge to Obasanjo's election as president, and Buhari is happy with how the election tribunal is going. He and most observers at the trial believe the evidence being presented is helping his case, and a different election tribunal this week threw out the April 2003 election of the Adamawa state governor, a PDP protege of VP Atiku in Atiku's home state, saying that no proper elections had been held there. According to Buhari's attorneys, they are wrapping up testimony and have presented evidence that either the elections or the announced results were flawed in at least 18 of Nigeria's 36 states. The ANPP could wrap up its case in the next three to four weeks and then attorneys for Obasanjo and the "Independent National Electoral Commission" (INEC) will have a chance to present witnesses in rebuttal. Most observers expect a final decision in this tribunal sometime in the July-August timeframe. END SUMMARY.

NWODO'S DAY IN COURT

12. (U) The ANPP election petition against President Obasanjo, Vice President Atiku and INEC over the conduct of the April 2003 elections continues this week with testimony from Cross Rivers and Enugu states. The highlight came on March 24 when another losing presidential aspirant, former Information Minister John Nwodo, took the stand. Nwodo was forced to wait patiently while Obasanjo's attorney Afe Babalola objected to various parts of his testimony. After the session, Nwodo told Poloff that he could easily smile and wait since he "knew the justices would admit the evidence." An attorney himself, Nwodo was one of the most effective witnesses to date, presenting a detailed description of events leading up to the 19 April Presidential election.

13. (C) The judges, down to a panel of four now that Justice Oguntade has been moved to the Supreme Court, have shown signs of weariness but still appreciate the levity produced by the verbal sparring among the attorneys and witnesses. An attorney himself, Nwodo limited his testimony to events in his home area, and countered the assertions by the attorneys for the President and for INEC that he was not being truthful in his testimony. Nwodo began by claiming that Enugu state voters could only pick up their voter cards "at the houses of known PDP supporters." Even he could not get his own card. Nwodo claimed the PDP Deputy Governor set up office in Enugu state's INEC headquarters and posted police and young men there that Nwodo said he "believed were PDP party thugs."

14. (U) Nwodo said he had objected to many of the names on the list of INEC-appointed staff because it included known PDP supporters, among them three first cousins of the Deputy Governor. Nwodo claimed the level of violence in the April 12 National Assembly election contributed to a low turnout at the April 19 President, VP and Governors election, but said that it did not matter since "no elections officials were at the polls in my Local Government Area" on April 19. His team visited each of the 192 polling sites and he personally visited 43; not one polling site was in operation. Similarly, he said there was no activity at the 20 collation centers at the end of the day, but results were announced on the radio while they were still making rounds of the centers.

15. (U) Nwodo told the court he had personally witnessed three shootings during the April 12 election and made a video that showed ballot stuffing, ballot boxes being stolen, and interviews with elections officials who said their materials had been confiscated by the police. The Deputy Governor came to his compound with a group of police at the end of the National Assembly elections and demanded that he surrender the video tape, Nwodo claimed. Unable to gain access to the Nwodo family compound, the police began firing into the compound and continued firing for "nearly two hours." Five of his family members were wounded. "They only stopped when the villagers organized to confront them, forcing the Deputy Governor and the police to abandon the bus they arrived in." Nwodo said that the "burnt out carcass" of the bus remains in front of his compound to this day.

16. (U) Obasanjo's attorney Babalola asked Nwodo why he had not filed a complaint. Nwodo said he had filed a complaint with the Enugu police commissioner and copied it to the GON's Inspector General of Police and the GON's INEC Chairman along with copies of his video. "Until now, the police have not responded," he averred. Nwodo was effective at countering the assertions by the attorneys for the President and for INEC that he was not being truthful in his testimony. At one point, a frustrated Babalola complained about one of Nwodo's responses and told the Justices, "That's OK. We can amend the responses later." And after Babalola accused Nwodo of giving false testimony, Nwodo responded that as a sworn officer of the court, under oath, and married to a judge, it would be impossible for him to lie. Eliciting laughter from the entire room, Tambaye asked Nwodo to put his responses in "simple grammar" since the Justices were recording the proceedings in longhand.

ADAMAWA'S TRIBUNAL THROWS OUT THE GOVERNOR ELECTION THERE

17. (C) The mood in the court was already one of anticipation, as everyone awaited word of the outcome of the ANPP's case against the gubernatorial elections in Adamawa, the VP Atiku's home state. The courtroom was full, as it has been most days since the proceedings began several months ago. Buhari's attorneys told Poloff they are wrapping up testimony and have presented evidence that either the elections or the announced results were flawed in at least 18 states. Having almost completed the testimony about non-voting and security issues, they said they will turn to presenting some of the most egregious examples of clear manipulation of the results by INEC. They could wrap up the case in the next three to four weeks, after which the President's attorneys will have a chance to present testimony to support their pleadings. Most observers expect a final decision in this tribunal sometime in the July-August timeframe and the Supreme Court should not deliberate long, as an appeal would be limited to the technical aspects of the case.

18. (C) As reports from Adamawa indicated the election of the PDP governor had been overturned, an unusually exuberant Buhari told Poloff he was happy that the legal process was finally starting to produce some results. Buhari said he remained concerned about "pressure and threats" on the judges in the tribunal hearing his case against the elections.

19. (C) COMMENT: Buhari and his team seem to sense that the end of the trial is approaching and to be catching their second wind in a process that could last for nearly half of Obasanjo's term before the issues of his election are resolved. Committed, for now, to the legal process, Buhari seems to be relishing the limelight, and is as anxious for the vindication as he is for overturning the election. With the Adamawa decision in, the ANPP and Buhari think that the tide has turned and that many more options favorable to their position will present themselves in the near future. They hope to travel to Washington, in part to gain USG views on options.

ROBERTS